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NO. _____

IN THE
UNITED STATES SUPREME COURT

SANDY EDMONDS, APPEARING AS TUTRIX OF HER MINOR SON CHRISTOPHER BELL

PETITIONER,

VERSUS

THE STATE OF LOUISIANA THROUGH THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS; AND HOWARD RANDALL

RESPONDENTS,

On Petition for a Writ of Certiorari to Louisiana State Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

WHETHER CERTIORARI SHOULD BE GRANTED TO DETERMINE WHETHER THE HIGHEST COURT OF LOUISIANA HAS ALLOWED THE DEFINITION OF "OFFENDER" FOR THE PURPOSE OF THE EXHAUSTION OF THE ADMINISTRATIVE REMEDY TO BE EXPANDED ERRONEOULY AND TO THE DETRIMENT OF MINORS TO INCLUDE A MINOR'S MOTHER AS HIS NATURAL TUTRIX WHO FILED SUIT FOR DAMAGES HE SUSTAINED WHILE IN THE CUSTODY OF THE STATE OF LOUISIANA, REQUIRING THE TUTRIX TO COMPLY WITH THE CORRECTIONS ADMISTRATIVE RELIEF REMEDY

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THE HIGHEST COURT OF LOUISIANA HAS ALLOWED THE DEFINITION OF "OFFENDER" FOR THE PURPOSE OF THE EXHAUSTION OF THE ADMINISTRATIVE REMEDY TO BE EXPANDED ERRONEOUSLY TO INCLUDE MINOR OFFENDER'S MOTHER WHO FILED SUIT FOR DAMAGES HE SUSTAINED WHILE IN THE CUSTODY OF THE STATE OF LOUISIANA, REQUIRING THE MOTHER TO COMPLY WITH THE CORRECTIONS ADMINISTRATIVE RELIEF REMEDY.....5

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STATEMENT OF THE BASIS OF JURISDICTION OF THE SUPREME COURT

On September 3, 1999 the Supreme Court of the State of Louisiana denied appellant's timely-filed motion for reconsideration. Pursuant to the Supreme Court Rule 13.1, this petition has been filed within 90 days of the denial of the rehearing.

The statutory provision for this Court's jurisdiction is 28 U.S. C. э 1254.

STATUTES INVOLVED IN THIS CASE

La. R.S. 15:1171(B), which provide that the DPSC may adopt an administrative remedy procedure providing the exclusive remedy for adult and juvenile offenders against

the state and its employee for all complaints and grievances arising while the offender is in the custody of the state.

La. R.S.15:1172(B) provides that no state court shall entertain an offender's grievance or complaint which falls under the purview of the Corrections Administrative Remedy Procedure unless or until the offender exhaust the remedies provided therein.

La. R. S. 15: 1174 (2) defines and "Offender" as an adult or juvenile offender who is in the physical or legal custody of the Department of Public Safety and Corrections.

STATEMENT OF THE CASE

Christopher Bell was a minor without procedural capacity, therefore his mother, Sandy Edmonds took proper steps to be duly appointed as natural tutrix following her son being injured while in the physical custody of the State of Louisiana.

On October 14, 1996, while in the custody of the Department of Public Safety and Corrections Christopher Bell sustained a traumatizing injury resulting in four of his fingers being amputated by a wood planner saw. Christopher Bell's injuries required hospitalization for more

that a month Ms. Edmonds was not aware of an administrative procedure, nor was she informed by the State that the administrative remedy was the exclusive remedy and she was required to exhaust the juvenile offender's administrative remedy prior to filing a lawsuit on behalf of her minor son. Moreover, at no time did Christopher Bell inform his mother that he was aware of any such requirement.

The accident occurred when Christopher Bell ("Christopher") was assisting the building trade instructor, Howard Randall who was building window panels for the class room. Mr. Randall turned on the saw for Christopher to use to cut the lumber to build the window panels. Christopher maintains that he had never operated the saw nor had he been trained in any safety measures or proper operation of the saw. In addition, that the saw did not have any protective cover or shield to prevent his hand from being pulled into the saw.

On or about March 31, 1999, the Court of Appeal for the Second Circuit rendered judgment and held that the district court should not have dismissed the lawsuit with prejudice, but agreed that the action was that of the minor,

therefore the administrative remedy should have to be exhausted prior to filing the lawsuit. The appellant court gave the plaintiff 30 days from the date the judgment becomes final to institute a claim under the Correction's Administration Remedy Procedure.

The court of appeal agreed that this case came under the purview of the Corrections Administrative Remedy Procedure, therefore effectively expanding the meaning of "offender" to Include tutrix or any other representative of a minor "offender." The opinion is published and the cite is: *Edmonds v. The State of Louisiana*, et al, 732 So, 2d 645 (La. App. 2d Cir. 1999.

The highest Court of Louisiana has refused to hear this case.

REASON FOR GRANTING THE WRIT

THE HIGHEST COURT OF LOUISIANA HAS REFUSED TO HEAR THIS CASE, THUS, THE HOLDING THAT THE ADMINISTRATIVE REMEDY APPLIED TO A NON-OFFENDER REPRESENTATIVE OF AN OFFENDER IS AN ERRONEOUS INTERPRETATION, AND THIS DECISION WILL CAUSE MATERIAL INJUSTICE AND THEREFORE WRIT OF CERTIORARI OR REVIEW SHOULD BE GRANTED TO PREVENT VIOLATION OF EQUAL PROTECTION AND DUE OF JUVENILE OFFENDERS.

La. R. S. 15:1171(B), which provide that the DPSC may adopt an administrative remedy procedure providing the exclusive remedy for adult and juvenile offenders against the state and its employee for all complaints and grievances arising while the offender is in the custody of the state. Also, La. R.S.15:1172(B) provides that no state court shall entertain an offender's grievance or complaint which falls under the purview of the Corrections Administrative Remedy Procedure unless or until the offender exhaust the remedies provided therein. La. R.S. 15: 1174 (2) defines and "Offender" as an adult or juvenile offender who is in the physical or legal custody of the Department of Public Safety and Corrections.... Appellant argues that she was not an "Offender" pursuant to the statute, therefore since she filed the suit as the natural tutrix of her minor son, who was a

minor and was in the physical custody of the Department of Public Safety and Correction, the administrative remedy was not applicable.

On or about March 31, 1999, the Court of Appeal for the Second Circuit rendered judgment and held that the district court should not have dismissed the lawsuit with prejudice, and gave the plaintiff 30 days from the date the judgment becomes final to institute a claim under the Correction's Administration Remedy Procedure. The court of appeal agreed that this case came under the purview of the Corrections Administrative Remedy Procedure, therefore effectively expanding the meaning of "offender" to Include the tutor or tutrix or any other representative of a minor "offender."

The highest Court of Louisiana has refused to hear this case, thus, the printed opinion of the Second Circuit Court holding that the administrative remedy applied to a non-offender representative of an offender in the custody of the Department of Corrections, which holding is an erroneous interpretation, and this decision will cause material injustice and therefore writ of certiorari or review should be granted to prevent clearly erroneous

interpretation of the law to remain in effect. The law which unfairly subjects a parent or other representative to comply with an administrative procedure without notice. Clearly from the reading of the statute, administrative remedy is not always the exclusive remedy available to "offenders" and "inmates." La. R. S. 15:1171 (B) provides in pertinent part that: ..."Such administration procedures, when promulgated, shall provide the exclusive remedy available to the offender for complaints or grievances governed thereby insofar as federal law allows"..... In other words, the exclusive nature of the remedy is subject to constitutional safeguards, including equal protection and due process.

The State District Court and the Appellant Court has expanded the meaning of "Offender." Interpretation of the term "offender" is an issue of first impression with respect to whether the definition would apply to a representative of an offender in the physical custody of the Department of Public Safety and Corrections for the purpose of complying with the Administrative Remedy Procedure . While the State of Louisiana has put in place procedure for handling adult and minor complaints and grievances while in the physical or legal custody of the state

the procedure does not address the issue of the Administrative Remedy Procedure in relationship to individuals not "offenders" or "inmates" who represent the interest of the "offender" or "inmate." *Green v. State of Louisiana, et al,* 96 0781 (LA. 1 Cir. 5/9/97) 693 So. 2d 1317. *Bumgarden v. Wackenhut Corrections Corp.*, 93-1349, (La. App. 3 Cir. 9/21/94, 645 so. 2d 655, 658, writ denied, 95-0156 (La. 6/2/95), 654 So. 2d 1102.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted:

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Dated: February 1, 2000

APPENDIX

APPENDIX A

STATE OF LOUISIANA * PARISH OF OUACHITA *
FOURTH DISTRICT COURT

SANDY EDMONDS, APPEARING AS * FILED
TUTRIX OF HER MINOR SON, February 13, 1998
CHRISTOPHER BELL

VERSUS NO. 97-1414 *

DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONS ET AL *
BY:_____ DEPUTY CLERK OF COURT

RULING

This matter is before the Court on a motion to dismiss filed by defendants State of Louisiana through the Department of Corrections and Howard Randall. In this motion the defendants seek to have the plaintiff's suit dismissed for failure to comply with La. R. S. 15:1172.

The plaintiff contents that the basis of the defendant's motion is prematurity which must be raised in a dilatory exception. She argues that since prematurity was not raised prior to filing an answer, the exception is waived.

La. R. S. 15:1171 et seq., set out an administrative remedy procedure which must be followed by offenders in correctional institutions who wish to make claims against the State. R. S. 15:1172 specifically states that if the offender has failed timely to pursue administrative remedies through this procedure, any petition he files shall be dismissed. In addition, the thirty day time period set out in La. R. S. 15:1177 has been held to be preemptive because it sets out a time period in which the right to file suit must be exercised. Carter v. Lynn, 93-1583 (La. App. 1 Cir. 5/20/94); 637 So. 2d 690. As a result, the plaintiff's right to file suit would not come into existence until the Department of Corrections renders a decision that is adverse to him and dismissal is appropriate under La. R. S. 15:1172.

For these reasons, the motion to dismissed is granted.

APPENDIX B

SANDY EDMONDS, APPEARING AS TUTRIX OF HER MINOR SON, CHRISTOPHER BELL	:	NUMBER 97-1414
	:	4TH JUDICIAL DISTRICT COURT
VERSUS	:	
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS ET AL	:	OUACHITA PARISH, LOUISIANA

JUDGMENT

THIS CAUSE having come before the court for hearing on November 19, 1997, on a Motion to Dismiss filed by the defendants, THE STATE OF LOUISIANA THROUGH THE DEPARTMETN OF SAFETY AND CORRECTIONS and HOWARD RANDALL, and against SANDY EDMONDS, appearing as Tutrix of her minor son, CHRISTOPHER BELL, and the Court finding that the law and evidence supports the defendants:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the defendants' Motion to Dismiss is GRANTED and that there be judgment herein dismissing, with prejudice, plaintiff's claims against the defendants

THE STATE OF LOUISIANA THROUGH THE DEPARTMENT OF SAFETY AND CORRECTIONS and HOWARD RANDALL, at plaintiff's cost.

Judgment rendered in chambers on the 13th day of February, 1998.

Judgment read and signed, on this 7th day of April, 1998

_____

MARCUS R.CLARK
DISTRICT JUDGE

APPENDIX C
Judgment rendered March 31, 1999
Application for rehearing may be filed within the delay allowed by art. 2166, LA C. C.P.

No. 31,821-CA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

SANDY EDMOND, APPEARING AS TUTRIX
Plaintiff-Appellant
OF HER MINOR SON, CHRISTOPHER BELL

versus

DEPARTMENT OF PUBLIC SAFETY, ET AL
Defendants-Appellees

* * * * *

Appealed from the
Fourth Judicial District Court for the
Parish of Quachita, Louisiana
Trial Court No. 97-1414

Honorable Marcus R. Clark, Judge

* * * * *

LINDA RITZIE
Counsel for Appellant

RICHARD P. IEYOUB
Counsel for Appellees

MARY A. BROWN
HEATHER L. HORTON
Assistant Attorneys General

* * * * *

Before WILLIAMS, STEWART and GASKINS, JJ.
Gaskins, Judge

The plaintiff, Sandy Edmond[1] , as natural tutrix for her minor son, Christopher Bell, appeals a trial court judgment dismissing a personal injury claim against the defendants, the Department of Public Safety & Corrections, through Louisiana Training Institute at Monroe, and Howard Randall. The trial court dismissed the suit because the plaintiff failed to comply with the Corrections

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[1] With the exception of the caption in this suit, the plaintiff is referred to by her attorney as "Sandy Edmonds." For purpose of this opinion, we will utilize the name of the tutrix as it appears in the caption of this case.

Administrative Remedy Procedure, provided in La. R. S. 15: 1171 et seq. For the following reasons, we affirm in part and amend in part the trial court judgment.

FACTS

On April 8, 1996, Christopher Bell was injured when four of his fingers were severed by a wood planer machine while Bell was in the custody of the Department of Safety and Corrections at Louisiana Training Institute (LTI) in Monroe, Louisiana. At the time of the accident, Bell was 14 years old. One year later, on April 8, 1997, Bell's mother, Sandy Edmond, in her capacity as natural tutrix of her minor son, Christopher Bell, filed suit against the Department of Public Safety and Corrections (DPSC). She also named Howard Randall as a defendant. Mr. Randall allegedly was Bell's shop instructor at LTI at the time the accident occurred. The defendants filed an answer to the lawsuit, and after the parties had exchanged interrogatories and requests for the production of documents, the defendant filed a motion to dismiss. The motion was based on the provisions of La. R. S. 15: 1171 (B), which provide that the DPSC may adopt an administrative remedy procedure providing the exclusive remedy for adult and juvenile

offenders against the state and its employees for all complaints and grievances arising while the offender is in the custody of the state. Also, La. R. S. 15:1172(B) provides that no state court shall entertain an offender's grievance or complaint which falls under the purview of the Corrections Administrative Remedy Procedure unless or until the offender exhausts the remedies provided therein.

A hearing on the motion to dismiss was held in the trial court on November 19, 1997. At the hearing, the plaintiff argued that the basis of the defendants' motion to dismiss was, in effect, an exception of prematurity, which was waived because it was filed after the defendants answered the plaintiff's petition. On February 13, 1998, the trial court issued written reasons for its decisions to grant the motion to dismiss in favor of the defendants. The trial court discounted the plaintiff's argument that the motion to dismiss was based upon an exception of prematurity. [2] The trial court noted that, under La. R. S. 15:1172, if an offender fails to pursue administrative remedies, any petition filed in the trial court shall be dismissed. The trial court found that the plaintiff's right to file suit would not come

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[2] This ruling is not raised as error appeal.

into existence until the Department of Corrections renders a decision adverse to him and therefore, dismissal , dismissal was appropriate and was granted in favor of the defendants. On April 8, 1998, the trial court filed a judgment in favor of the defendants, dismissing the plaintiff's claim with prejudice. The plaintiff appealed the trial court judgment.

DISMISSAL OF CLAIM

On appeal, Ms. Edmond argues that the trial court erred in dismissing her claim against the defendants, asserting that the Corrections Administrative Remedy Procedure is not applicable to her. She contends that La. R. S. 15: 1171 et seq. applies only to offenders as defined in that statutory scheme. Ms. Edmonds argues that she is the plaintiff in this case and she is not an offender as defined in the statue. Therefore, the Corrections Administrative Remedy Procedure is not applicable to her and does not preclude the prosecution of her claim against the state in the trial court. This argument is without merit.

The statutory provisions relevant to this case are set forth below in pertinent part:

La. R. S. 15:1171(B):

The department or sheriff may . . . adopt in accordance with the Administrative Procedure Act,

administrative remedy procedure remedy procedures for receiving, hearing, and disposing of any and all complaints the state, the governor, the departments or any officials or employees thereof, . . . which arises while an offender is within thecustody or under the supervisor of the department . . . Such complaints and grievances include but are not limited to any and all claims seeking monetary, injunctive, declaratory, or any other form of relied authorized by law and by way of illustration includes action pertaining to conditions of confinement, personal injuries, medical malpractice, time computations, even though urged as a writ of habeas corpus, or changes to rules, regulation, policies, or stature. Such administrative procedure, when promulgated, shall provide the exclusives remedy available to the offender for complaints or grievance governed theory insofar as federal law allows . . .

[Emphasis supplied.]

La. R. S. 15:1172(A):

Upon approval of the administrative remedy procedure . . and the implemented of the procedure within the department or by the sheriff, this procedure shall constitute the administrative remedies available to offenders for the purpose of preserving any cause of action they may claim to have against the State of Louisiana, the Department of Public Safety and Corrections, or its employees . . .

La. R. S. 15:1172(B)

No state court shall entertain an offender's grievance or complaint which falls under the purview of the

administrative remedy procedure unless and until the offender shall have exhausted the remedies as provided in said procedure. If the offender has failed timely to pursue administrative remedies through this procedure, any petition he files shall be dismissed. If at the time the petition is filed the administrative remedy process has not yet been completed, the court shall stay the proceedings for ninety days to allow for completion of the procedure and exhaustion of the remedies thereunder.

La. R. S. 15:1174(2):

"Offender" means an adult or juvenile offender who is in the physical or legal custody of the Department of Public Safety and Corrections, a contractor operating a private prison facility, or a sheriff when the basis for the complaint or grievances arises. Any custody, shall not affect status as an "offender" for the purposes of this Part. [Emphasis supplied.]

La. R. S. 15:1177(A):

Any offender who is aggrieved by an adverse decision by the Department of Public Safety and Correction . . . rendered pursuant to any administrative remedy procedures under this Part may, within 30 days after receipt of the decision, seek judicial review of the decision only in the Nineteenth Judicial District Court . . . in the manner hereinafter provided: [Emphasis supplied.]

(9) The court may reverse or modify the decision only if substantial rights of the appellant have been prejudicial because the

administrative findings, inferences, conclusions, or decisions are:

(a) In violation of constitutional or statutory prisons.
(b) In excess of the statutory authority of the agency.
(c) Made upon unlawful procedure.
(d) Affected by other error of law.
(e) Arbitrary or capricious or characterized by abuse discretion or clearly unwarranted exercises of discretion.
(f) Manifestly erroneous in view of the reliable probative and substantial evidence on the whole record. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by firsthand observation of demeanor on the witness stand and the reviewing court does shall be given to the agency's determination of credibility issues.

It is clear from the wording of La. R. S. 15:1171(B) that the statutory scheme is intended to apply to juvenile offenders. However, La. C. C. P. art 683 provides that an unemancipated minor does not have the procedural capacity to sue. Therefore, in compliance with La. C. C. P. art. 4502 and La. C. C. art 235, Ms. Edmond took proper steps to be duly appointed as natural tutrix for her son. She then filed

suit on her son's behalf. Ms. Edmond did not sue or assert any claims in her individual capacity. Therefor, she is merely the legal representative for her son. She is not the plaintiff in this suit in her individual capacity. The damages claimed in the petition are those of the minor, Christopher Bell, not those of his mother, Ms. Edmond. Damages for personal injuries to a minor belong to the child and not to the parent who brings suit. *Hanna v. Otis,* 92 So. 360 (La. 1922); *Bernard v. Gravois,* 8 So. 2d 318 La. App. 1st Cir. 1942); *Lane v. Mud Supply Company*, 111 So. 2d 173 (La App. Orleans 1959). Therefore, it is the status of the minor, the owner of the claim, that is determinative of this issue. Because the juvenile is an offender as defined by La. R. S. 15:1174(2)[3], the exclusive relief of the Corrections Administrative Remedy Procedure is applicable to this case and must be followed.

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[3] We note that La. R. S. 15: 1174(2) defining "offender" was amended by Act 575. The wording of the statute is now contrary to the ruling established in *Bumgarden v Wackenhul Corrections Corporation* 93-1349 (La. App. 3d Cir. 9/21/94), 645 So. 2d 655, writ denied 95-0156 (La. 6/2/95), 654 So. 2d 1102, cited in brief by plaintiff. Bumgarden held that the status of the plaintiff at the time the suit is filed and not at the time of the action arose is determative of whether the exclusive remedy of the Corrections Adminstrative Remedy Procedure must be followed.

Because administrative remedies were not exhausted prior to filing of this suit in the Fourth Judicial District Court, the trial court was required to dismiss the suit. The plaintiff must exhaust administrative remedies before seeking judicial review. Such review may be made only in the Nineteenth Judicial District.[4] La. R. S. 15: 1172(B): La. R. S. 15:1177; *Marler v. Petty*, 94-1851 (La. 4/10/95), 653 So. 2d 1167: *Bellard v. Louisiana Correctional & Industrial School*, 95-0157 (La. 10-0157 (La. 10/16/95), 661 So 2d 430; we affirm that portion of the trial court judgment dismissing the plaintiff's claim.

We amend that portion of the judgment dismissing the claim with prejudice. No reasons were given for dismissing the claim with prejudice. The trial court may have reasoned that, because the Corrections Administrative Remedy Procedure was not instituted within 30 days of the date of the incident giving rise to the claim, the plaintiff's cause of action was extinguished. We note that the administrative rules enacted in compliance with La. R. S. 15:1171 et seq., and promulgated in Louisiana Register Volume 17, No. 1 provide that the administrative remedy

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[4] If the offender is in the physical custody of the sheriff, however, judicial review would lie in the district court having jurisdiction in the parish in which the sheriff is located.

process must be commenced by writing a letter to the unit head setting for the basis of the claim and the relief sought. The letter is to be written to the unit head, within 30 days of the alleged event. However, the rule provides that this requirement may be waived where the circumstances warrant, such as where the offender is ill and unable to write. The rule provides that the screening officer will use his best, reasonable judgment in such matters.

In *Jackson v. Kaylo*, 96 2775 (La. App. 1st Cir. 2/20/98), 709 So. 2d 820, the issue was whether an inmate's failure to initiate the prison grievance procedure within 30 days of the date of the incident giving rise to the claim extinguished the cause of action against the state. Citing La. R. S. 15:1172, requiring an offender to timely pursue administrative remedies or have his petition dismissed, the appellate court stated that it was clear the legislature contemplated there would be some time limit on the right to pursue an administrative remedy. However, the legislature did not impose a time limit in the statute, and the court noted that it is axiomatic that there can be no prescription other than threat established by legislation. The 30 day time period allowed for initiation of the claim was part of the

administrative procedure, not part of the statute, The appellate court concluded that the 30 day limitation in the administrative rules did not extinguish the cause of action because the administrative officers were granted discretion to waive the time limit and accept untimely claims.

Therefore, the appellate court concluded that, although the trial court did not have jurisdiction to entertain the lawsuit at the time the offender filed suit, because of the offenders failure to exhaust the administrative remedy procedure, the trial court was not required to dismiss the suit as time-barred or extinguished by prescription. Instead, if the offender chose to initiate the administrative remedy, an administrative official would determine whether the offender's failure to file his complaint within 30 days of the incident giving rise to the claim was justifiable, under all the circumstances. The court affirmed dismissal without prejudice.

In accordance with the reasoning in *Jackson v. Kaylo, supra,* we find that the claim in the present case should be dismissed without prejudice. The plaintiff will then have the opportunity to comply with the prescribed administrative procedure and an administrative officer may

make a determination of whether the failure to timely comply with the Corrections Administrative Remedy Procedure was justifiable, under al the circumstances in this case. In the event of an adverse decision, the plaintiff may seek judicial review in the Nineteenth Judicial District Court.

CONCLUSION

For the reasons stated above, we hereby affirm the dismissal of the suit, but amend to delete the prejudicial effect assigned by the trial court, and make the judgment one of dismissal without prejudice. The plaintiff is given 30 days from the date this judgment becomes final to institute a claim under the Corrections Administrative Remedy Procedure and the rules promulgated pursuant thereto. Cost in this court and tin the court below are assess to the plaintiff.

AFFIRMED IN PART, AMENDED IN PART, AND AS AMENDED, AFFIRMED.

APPENDIX D

THE SUPREME COURT OF THE STATE OF LOUISIANA

SANDY EDMONDS, APPEARING AS
TUTRIX OF HER MINOR SON,
CHRISTOPHER BELL

VERSUS NO. 99-C-1264

DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONS ET AL

IN RE: Edmonds, Sandy, Etal; - Plaintiff(s); Applying for Reconsideration of this Courts action dated June 18, 1999; Parish of Ouachita 4th Judicial District Court div. "E" Number 97-1414; to the Court of Appeal, Second Circuit, Number 31821-CA September 3, 1999

Reconsideration denied. Judgment is definitive.

CDK
PFC
HTL
BJJ
JPV
CDT
JTK

MARCUS, J., - not on panel
Supreme Court of Louisiana
September 3, 1999

_____

Clerk of Court
For the Court

Supreme Court, U.S.
FILED
MAR 24 2000
OFFICE OF THE CLERK

No. 99-1330

In The

Supreme Court of the United States

SANDY EDMONDS, APPEARING AS TUTRIX OF HER MINOR SON CHRISTOPHER BELL,

Petitioner,

versus

THE STATE OF LOUISIANA THROUGH THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS; AND HOWARD RANDALL,

Respondents.

On Petition For A Writ Of Certiorari To The Louisiana State Supreme Court

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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BRIEF IN OPPOSITION

The State of Louisiana, through the Department of Public Safety and Corrections and Howard Randall, respectfully represent:

STATEMENT OF THE CASE

Petitioner herein seeks discretionary review by this Court of the Louisiana State Supreme Court denial of writs below. Petitioner sought the discretionary review by the Louisiana Supreme Court to review the decision of the Louisiana Second Circuit Court of Appeal wherein that court affirmed in part, amended in part, and as amended, affirmed the ruling of the Fourth Judicial District Court dismissing plaintiff's suit with prejudice.

The State of Louisiana, through the Department of Public Safety and Corrections and Howard Randall, show that for the reasons set forth herein, this Court should not grant petitioner's writ application.

A. STATEMENT OF FACTS

Petitioner's minor son, Christopher Bell, was committed to the Department of Public Safety and Corrections on October 14, 1994, and was confined to the Louisiana Training Institute's Swanson Correctional Center for Youth ("LTI") in Monroe, Louisiana. On April 8, 1996, it is alleged that Christopher Bell injured his hand in an accident involving a surface wood planer machine while in shop class at LTI. This alleged injury was the

basis of a tort suit filed on April 8, 1997, exactly one year after the accident.

B. PROCEDURAL HISTORY OF THE CASE

Petitioner, appearing as the natural tutrix of her minor son, filed suit on behalf of the minor against the Department of Public Safety & Corrections, through Louisiana Training Institute and Howard Randall, on April 8, 1997. Prior to filing suit in state district court, no internal Department of Corrections complaints or grievances were filed on behalf of Christopher Bell. After suit was filed, the State of Louisiana, through the Department of Public Safety and Corrections and Howard Randall thereafter filed a Motion to Dismiss based on the Petitioner's failure to comply with the requirements of the Administrative Remedy Procedures Act, LSA-R.S. 15:1171, 15:1172 and 15:1177. (Appendix D).

The Fourth Judicial District, Ouachita Parish, State of Louisiana, heard the Motion to Dismiss filed by the State of Louisiana, through the Department of Public Safety and Corrections and Howard Randall (sometimes hereinafter collectively referred to as "defendants"), and issued judgment on April 7, 1998 dismissing Petitioner's claims with prejudice. Petitioner appealed this decision to the Second Circuit Court of Appeal, State of Louisiana and on March 31, 1999 the appellate court affirmed the trial court's dismissal of the matter but amended the trial court judgment from a dismissal with prejudice to a dismissal without prejudice. On May 3, 1999 Petitioner filed an Application for Writ of Certiorari or Review to the Supreme Court of the State of Louisiana. On June 18,

1999 the Supreme Court of the State of Louisiana issued a ruling denying Petitioner's Writ Application. (Appendix A). Petitioner attempted to request reconsideration of the June 18, 1999 writ denial. However, such a procedure is not allowed under Louisiana law. Thus, on September 3, 1999 the Supreme Court of the State of Louisiana issued a declaration that the June 18, 1999 ruling was definitive on the writ application. Petitioner filed this Petition for Writ of Certiorari on December 2, 1999.

SUMMARY OF ARGUMENTS FOR DENYING WRIT

This writ application was untimely filed and does not present any compelling reasons required for consideration before this Honorable Court. Petitioner's writ application to this Honorable Court was filed well after the time allowed for the filing of such a request. Further, the state district court and the state appellate court were presented with an interpretation of a state statute and ruled according to interpretation of those laws. The state appellate court reviewed the decision of the state district court and the Petitioner sought review to the Supreme Court of the State of Louisiana, which declined to hear the matter. Further, there is no merit to the argument that the decision of the Second Circuit Court of Appeal for the State of Louisiana was in error.

ARGUMENT

1. This application for writ of certiorari was not timely filed.

Rule 13, Supreme Court Rules, provides in part:

> "1. Unless otherwise provided by law, a petition for writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort . . . is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment. A petition for writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days of entry of the order denying discretionary review.
>
> 2. The Clerk will not file any petition for a writ of certiorari that is jurisdictionally out of time. *See e.g.*, 28 U.S.C. § 2101(c).
>
> 3. . . . if a petition for rehearing is timely filed in the lower court by any party, the time to file the petition for a writ of certiorari for all parties . . . runs from the date of the denial of the petition for rehearing . . . "

Petitioner filed this writ application on December 2, 1999, which is 167 days after the June 18, 1999 entry of the order denying writs from the Supreme Court of the State of Louisiana. (Appendix A).

This proposed filing outside of the 90 days is based on petitioner's assumption that it is timely filed because

it was filed within 90 days after the denial for rehearing of the writ denial on September 3, 1999. (Petitioner's Appendix 18).

However, the petitioner had no right to request a rehearing in the Supreme Court for the State of Louisiana of her writ denial. Accordingly, the application for rehearing had no effect and cannot be used to extend the time for filing.

Rule IX, Section 6, Louisiana Supreme Court Rules, provides that: "An application for rehearing will not be considered when the court has merely granted or denied an application for a writ of certiorari . . . " (Appendix B, complete text of Rule IX). *See also, Posey v. Fabre,* 64680 (La. 7/2/79), 373 So.2d 535; *State v. Phillips,* 60756 (La. 10/21/77), 350 So.2d 903.

Louisiana Code of Civil Procedure Article 2166(D) states that a judgment of a court of appeal becomes final when the state Supreme Court denies the application for certiorari. (Appendix C, complete text of LSA-C.C.P. Art. 2166).

A petition for certiorari in a civil case from a state court must be filed within 90 days of the entry of the judgment complained of below. This 90-day limit is mandatory and jurisdictional. *Federal Election Commission v. NRA Political Victory Fund,* 513 U.S. 88, 115 S.Ct. 537, 130 L.Ed.2d 439 (U.S. Dist.Col. Dec. 6, 1994) (NO. 93-1151).

2. The issues presented by petitioner in her writ application do not warrant review by this Court as they do not involve any of the compelling reasons required.

Rule 10, Supreme Court rules, provides that:

> "Review on a writ of certiorari is not a matter of right, but of judicial discretion and that a petition for a writ of certiorari will be granted only for compelling reasons. . . . A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."

The principal purpose for which this Court uses certiorari jurisdiction is to resolve conflicts among Circuit Courts of Appeals and state courts concerning the meaning of provisions of federal law. *See, Braxton v. U.S.*, 500 U.S. 344, 111 S.Ct. 1854, 114 L.Ed.2d 385 (U.S. Md. May 28, 1991) (NO. 90-5358). No such purpose presents to this Court in this petitioner's application. Rather, this matter concerns the application of state law. There are no compelling reasons as contemplated by Rule 10, Supreme Court rules and relevant jurisdiction that would warrant review by this Court.

3. The Second Circuit Court of Appeal for the State of Louisiana was correct in affirming the lower court decision to dismiss this matter under applicable Louisiana law.

The Second Circuit Court of Appeal for the State of Louisiana was correct in holding that the trial court was correct in dismissing the claims against the defendants

pursuant to the relevant provisions of the Louisiana Corrections Administrative Remedy Procedure. (Appendix D). The petitioner argues that this matter turns on the interpretation of the term "offender" in the Louisiana Corrections Administrative Remedy Procedure. The Second Circuit Court of Appeal for the State of Louisiana addressed this issue by relying on the clear wording in these statutes to the effect that they include "juvenile offenders." Thus, Louisiana law clearly contemplated that these Administrative Procedures would apply to juveniles, who under Louisiana law lack procedural capacity to sue on their own behalf. Thus, logically, the court reasoned that a tutor bringing suit on behalf of a juvenile offender is clearly subject to the Administrative Procedures based upon a plan reading of the statute. (Petitioner's Appendix 9-13).

Further, recognizing that the Corrections Administrative Remedy Procedure provides for waiver of certain requirements when "circumstances warrant," the Second Circuit Court of Appeal of the State of Louisiana amended that portion of the trial court's judgment dismissing Petitioner's claims with prejudice to a dismissal without prejudice. (Petitioner's Appendix 14-17). Thus, the Second Circuit Court of Appeal for the State of Louisiana clearly addressed all issues concerning the application of the Corrections Administrative Remedy as they are applied to the facts alleged by Petitioner.

CONCLUSION

For the foregoing reasons, review by this Court is neither appropriate nor necessary; thus, the writ of certiorari should not be granted.

Respectfully submitted,

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State of Louisiana, Through the Department of Transportation and Development and Howard Randall

The Supreme Court of the State of Louisiana

SANDY EDMONDS, APPEARING
AS TUTRIX OF HER MINOR SON,
CHRISTOPHER BELL

VS. NO. 99-C – 1264

DEPARTMENT OF PUBLIC SAFETY,
ET AL

IN RE: Edmonds, Sandy Etal; – Plaintiff(s); Applying for Writ of Certiorari and/or Review; Parish of Ouachita 4th Judicial District Court Div. "E" Number 97-1414; to the Court of Appeal, Second Circuit, Number 31021-CA

June 18, 1999

Denied.

BJJ
PFC
HTL
CDK
JPV
CDT

MARCUS, J. not on panel.

KNOLL, J. would grant the writ.

Supreme Court of Louisiana
June 18, 1999

/s/ _____
Clerk of Court
For the Court

WEST'S LOUISIANA STATUTES ANNOTATED
LOUISIANA REVISED STATUTES
RUELS OF SUPREME COURT OF LOUISIANA
PART A. PRACTICE AND PROCEDURE

RULE IX. REHEARINGS

Section 1. An application for rehearing must be filed with the clerk on or before the fourteenth calendar day after the mailing of the notice of judgment, and no extension of time therefor will be granted. Nine copies of the application shall be filed with the original. A copy of the application shall be mailed or delivered to opposing counsel.

Section 2. An application for rehearing properly mailed on or before the last day of the delay shall be deemed timely filed. If the application is received by mail on the first legal day following the expiration of the delay, there shall be a rebuttable presumption that it was timely filed. In all cases where the presumption does not apply, the timeliness of the mailing shall be shown only by an official United States postmark or by official receipt or certificate from the United States Postal Service made at the time of mailing which indicates the date thereof. For the purpose of this rule, the term "by mail" applies only to the United States Postal Service.

Applications forwarded by private delivery or courier service shall be deemed timely filed only if received by the clerk on or before the last day of the delay for filing.

Section 3. If the applicant for rehearing desires further time for filing of brief in support of his application,

he shall request additional time in his application and the court may grant or refuse such delay in its discretion.

Section 4. When a rehearing is granted, the case may be specially fixed for argument. When called, the case may be argued orally, on the briefs already filed, with such additional or supplemental briefs as the parties may see fit to file before the argument and resubmission of the case on rehearing. When a rehearing is granted, the court may order it submitted on the briefs previously filed and such supplemental briefs as the parties may wish to file.

Section 5. When a case has been decided on rehearing, another application for rehearing will not be considered unless the applicant has not theretofore applied for and been granted a rehearing or unless the court, in deciding the case on rehearing, has expressly reserved to the unsuccessful party or parties the right to apply for another rehearing.

Section 6. An application for rehearing will not be considered when the court has merely granted or denied an application for a writ of certiorari or a remedial or other supervisory writ, or when the judgment of this court is merely overruling a motion to dismiss an appeal or a motion to recall or rescind a rule nisi, or when, for any reason, the judgment has not finally disposed of the case in this court, or when an election case has been decided as provided by Rule X, Section 5(c).

LOUISIANA CODE OF CIVIL PROCEDURE ARTICLE 2166

Art. 2166. Rehearing, court of appeal judgment; finality; stay

A. Within fourteen days of the mailing of the notice of the judgment and opinion of the court of appeal, a party may apply to the court of appeal for a rehearing. Within thirty days of the mailing of the notice of the judgment and opinion of the court of appeal, a party may apply to the supreme court for a writ of certiorari. The judgment of a court of appeal becomes final and definitive if neither an application to the court of appeal for rehearing nor an application to the supreme court for a writ of certiorari is timely filed.

B. If any party files a timely application to the court of appeal for a rehearing, then the time within which any other party may apply to the supreme court for a writ of certiorari shall be extended until thirty days of the mailing of the notice of a denial of rehearing.

C. If a timely application for rehearing has been filed in the court of appeal and the court of appeal denies the application, the judgment becomes final and definitive unless an application for writ of certiorari to the supreme court is filed within thirty days of the mailing of the notice of a denial of rehearing.

D. If an application for certiorari to the supreme court is timely filed, a judgment of the court of appeal becomes final and definitive when the supreme court denies the application for certiorari. The supreme court may stay the execution of the judgment of the court of

appeal pending a timely application for certiorari or an appeal to the United States Supreme Court.

WEST'S LOUISIANA STATUTES ANNOTATED
LOUISIANA REVISED STATUTES
TITLE 15. CRIMINAL PROCEDURE
CHAPTER 7. PRISONS AND CORRECTIONAL INSTITUTIONS
PART XV. CORRECTIONS ADMINISTRATIVE REMEDY PROCEDURE

§ 1171. Authority

A. The Department of Public Safety and Corrections and each sheriff may adopt an administrative remedy procedure at each of their adult and juvenile institutions, including private prison facilities, in compliance with 42 United States Code 1997, the "Civil Rights of Institutionalized Persons Act", or CRIPA, and Part 40 of Title 28, Code of Federal Regulations.

B. The department or sheriff may also adopt, in accordance with the Administrative Procedure Act,[1] administrative remedy procedures for receiving, hearing, and disposing of any and all complaints and grievances by adult or juvenile offenders against the state, the governor, the department or any officials or employees thereof, the contractor operating a private prison facility or any of its employees, shareholders, directors, officers, or agents, or a sheriff, his deputies, or employees, which arise while

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[1] R.S. 49:950 et seq.

an offender is within the custody or under the supervision of the department, a contractor operating a private prison facility, or a sheriff. Such complaints and grievances include but are not limited to any and all claims seeking monetary, injunctive, declaratory, or any other form of relief authorized by law and by way of illustration includes actions pertaining to conditions of confinement, personal injuries, medical malpractice, time computations, even though urged as a writ of habeas corpus, or challenges to rules, regulations, policies, or statutes. Such administrative procedures, when promulgated, shall provide the exclusive remedy available to the offender for complaints or grievances governed thereby insofar as federal law allows. All such procedures, including the adult and juvenile offender disciplinary process, promulgated and effective prior to June 30, 1989, shall be deemed to be the exclusive remedy for complaints and grievances to which they apply insofar as federal law allows.

C. The department or sheriff may also adopt procedures for adult or juvenile offenders to discover and produce evidence in order to substantiate their claims and promulgate rules and regulations governing the recommendation, review, and approval of an award for monetary relief.

D. For the purposes of this Part, status as an "offender" is determined as of the time the basis for a complaint or grievance arises. Subsequent events, including posttrial judicial action or release from custody, shall not affect status as an "offender" for the purposes of this Part.

WEST'S LOUISIANA STATUTES ANNOTATED
LOUISIANA REVISED STATUTES
TITLE 15. CRIMINAL PROCEDURE
CHAPTER 7. PRISONS AND CORRECTIONAL INSTITUTIONS
PART XV. CORRECTIONS ADMINISTRATIVE REMEDY PROCEDURE

§ 1172. Effect

A. Upon approval of the administrative remedy procedure by a federal court, as authorized and required by 42 USC 1997(C)(2),[1] or as otherwise authorized by law, and the implementation of the procedure within the department or by the sheriff, this procedure shall constitute the administrative remedies available to offenders for the purpose of preserving any cause of action they may claim to have against the state of Louisiana, the Department of Public Safety and Corrections, or its employees, the contractor operating a private prison facility or any of its employees, shareholders, directors, or officers, or a sheriff, or his employees or deputies.

B. No state court shall entertain an offender's grievance or complaint which falls under the purview of the administrative remedy procedure unless and until the offender shall have exhausted the remedies as provided in said procedure. If the offender has failed timely to pursue administrative remedies through this procedure, any petition he files shall be dismissed. If at the time the petition is filed the administrative remedy process has

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[1] The citation in subsec. A is as it appears in the enrolled bill.

not yet been completed, the court shall stay the proceedings for ninety days to allow for completion of the procedure and exhaustion of the remedies thereunder.

C. Any contractor operating a private prison facility shall adhere to all provisions of this Part and the administrative remedy procedures adopted by the department in accordance with this Part.

WEST'S LOUISIANA STATUTES ANNOTATED
LOUISIANA REVISED STATUTES
TITLE 15. CRIMINAL PROCEDURE
CHAPTER 7. PRISONS AND CORRECTIONAL INSTITUTIONS
PART XV. CORRECTIONS ADMINISTRATIVE REMEDY PROCEDURE

§ 1177. Judicial review

A. Any offender who is aggrieved by an adverse decision by the Department of Public Safety and Corrections or a contractor operating a private prison facility rendered pursuant to any administrative remedy procedures under this Part may, within thirty days after receipt of the decision, seek judicial review of the decision only in the Nineteenth Judicial District Court or, if the offender is in the physical custody of the sheriff, in the district court having jurisdiction in the parish in which the sheriff is located, in the manner hereinafter provided:

(1) Proceedings for review may be instituted by filing a petition for review in the district court within thirty days after receipt of the notice of the final decision by the agency or, if a rehearing by the agency is had or ordered by the court, within thirty days after the decision thereof. Copies of the petition shall be served upon the agency and all defendants, as provided by law.

(2) The filing of the petition does not itself stay enforcement of the agency decision. The agency may grant, or the reviewing court may order, a stay ex parte upon appropriate terms.

(3) Within thirty days after service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs related thereto. The court may require or permit subsequent corrections or additions to the record.

(4) The court may order that additional evidence be taken before the agency upon conditions determined by the court. However, discovery provisions of the Code of Civil Procedure pertaining to ordinary suits are inappropriate and not applicable in a suit for judicial review under this Part.

(5) The review shall be conducted by the court without a jury and shall be confined to the record. The review shall be limited to the issues presented in the petition for review and the administrative remedy

request filed at the agency level. In cases of alleged irregularities in procedure before the agency, proof thereon may be taken in the court.

(6)(a) A party or agency who desires oral argument shall make a timely request for oral argument, as hereinafter provided. The request shall include a brief statement of why oral argument should be had. The court, in its discretion, may hear oral argument.

(b) A request for oral argument must be made by the plaintiff with the petition for review or by the agency or defendant with the transmission of the administrative record or answer to the reviewing court, unless an extension of time is granted by the court.

(c) A request for oral argument on an exception or motion must be filed by the movant with the filing of the exception or motion, and by the non-movant with the filing of any timely opposition to the exception or motion.

(7) In the event that no oral argument is ordered, the court shall allow the parties, including the agency, a reasonable time for filing a brief or memorandum concerning the issues before the court.

(8) The court may affirm the decision of the agency or remand the case for further proceedings, or order that additional evidence be taken.

(9) The court may reverse or modify the decision only if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(a) In violation of constitutional or statutory provisions.

(b) In excess of the statutory authority of the agency.

(c) Made upon unlawful procedure.

(d) Affected by other error of law.

(e) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(f) Manifestly erroneous in view of the reliable, probative and substantial evidence on the whole record. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by first-hand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

B. (1) If an offender who files a complaint or grievance which is the subject of an application for judicial review is not in the physical custody of the Department of Public Safety and Corrections, or of a contractor operating a private prison facility, or of a sheriff when the decision is rendered with respect to the application for judicial review, the person against whom the complaint or grievance was filed may deliver that decision to the person who filed the complaint or grievance by mailing the decision by first class United States mail to the person who filed the complaint or grievance, at the most recent address provided by that person.

(2) If the decision is mailed to that person and cannot be delivered by the United States Postal Service, the envelope in which the decision was mailed, together with the notations made on that envelope by the United

States Postal Service concerning the inability to deliver that envelope, may be introduced into evidence for the purpose of showing compliance with the provisions of this Subsection.

(3) If the judge finds that the person against whom the complaint or grievance was filed has used due diligence in mailing the decision, the court may determine that that person has complied with the provisions of this subsection and has complied with the requirements of due process concerning notice of that decision.

C. This Section shall not apply to the commitment and transfer of children under R.S. 15:901.

D. This Section shall provide the exclusive procedure and standard for review for all offenders as defined seeking review under this Part.